

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

In re:

PERRY W. KESNER, SR. and
ROBIN O. KESNER,

Debtors.

Case No. 00-10778-RGM
(Chapter 13)

MEMORANDUM OPINION AND ORDER

This case came on this day on the trustee's recommendation of confirmation of the debtors' chapter 13 plan.

Upon review of the file, it appears that the debtors have filed three prior cases in this court. The first, case number 98-13392-SSM, was filed on April 30, 1998, pursuant to chapter 13 of the United States Bankruptcy Code and was dismissed on May 4, 1999, on the motion of the chapter 13 trustee. The second, case number 99-12857-SSM, was filed on June 2, 1999, pursuant to chapter 7 of the United States Bankruptcy Code. The debtors were granted a discharge on September 10, 1999. There was no distribution to creditors. The case was closed October 29, 1999. The third, case number 00-10457-SSM, was filed on February 7, 2000, pursuant to chapter 13 of the United States Bankruptcy Code. It was dismissed on February 23, 2000, for failure to timely file a chapter 13 plan. This case was filed on February 25, 2000.

The schedules reflect that the debtors are solvent and have gross income in excess of \$6,700.0 per month. Only one creditor is listed, Zia U. Hassan. The claim is scheduled as a disputed unsecured non-priority claim in the amount of \$10,000.00 based on a "hold over tenancy." The statement of affairs reflect

that there is a lawsuit pending in Loudoun County General District Court for unlawful detainer and damages. No proof of claim has been filed. The bar date for non-governmental proofs of claim is June 20, 2000.

Schedule J reflects net disposable income of \$674.36 per month. The plan, however, proposes to pay the sole creditor \$200.00 a month for 60 months. No interest is proposed to be paid to the creditor. The Statement of Financial Affairs suggests a disability in 1997 or 1998 which was covered in part by disability insurance. There is also an indication that a 401(k) retirement plan, which was funded in the amount of \$60,000.00, was terminated and the proceeds used by the debtors. The schedules further suggest that due to the interruption of income, the financial circumstances of the debtors rapidly deteriorated. They lost their home at foreclosure in October, 1999, and had apparently attempted through the prior bankruptcy filings to restructure their financial affairs and save their home.

While these are unhappy circumstances, there is nothing in the file to support the trustee's recommendation of confirmation of this plan which deals with a single creditor and does not commit the debtors' entire net disposable income to payment of that creditor. The record suggests a question of good faith and does not support confirmation without a hearing or further explanation. While Federal Rule of Bankruptcy Procedure 3015(f) permits the court to find that a plan has been proposed in good faith, and, not by any means forbidden by law without receiving evidence on such issues, the court is not required to do so. In the circumstances of this case, the court will require appropriate evidence from the debtor on all issues relating to confirmation. It is, therefore,

ORDERED that this case be set for a confirmation hearing on **May 16, 2000 at 1:30 p.m.**

Alexandria, Virginia
April 14, 2000

signed Robert G. Mayer
Robert G. Mayer
United States Bankruptcy Judge

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